



Status: **legally binding**

Class Ruling

Pacific Current Group Limited – off-market share buy-back

❶ Relying on this Ruling

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling sets out the income tax consequences for shareholders of Pacific Current Group Limited (PAC) who participated in the off-market share buy-back (Buy-Back) of PAC shares approved by shareholders at an extraordinary general meeting on 30 January 2025.
2. Details of this scheme are set out in paragraphs 21 to 38 of this Ruling.
3. All legislative references in this Ruling are to provisions of the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997* (as detailed in the table in Appendix 2 to this Ruling).

Who this Ruling applies to

4. This Ruling applies to you if you sold some or all of your PAC shares under the Buy-Back.
5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 21 to 38 of this Ruling.

Note: Division 230 will not apply to individuals unless they have made an election for it to apply.

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When this Ruling applies

6. This Ruling applies from 1 July 2024 to 30 June 2025.

Ruling**Off-market purchase**

7. The Buy-Back is an off-market purchase for the purposes of section 159GZZZK.

No part of the Buy-Back price is a dividend

8. No part of the Buy-Back price you received is taken to be a dividend as PAC is a listed public company (as defined in subsection 995-1(1)) and the Buy-Back is an off-market purchase (section 159GZZZPA).

Sale consideration

9. You are taken to have received the Buy-Back price of \$12.00 as consideration for each PAC share you sold in the Buy-Back on 25 March 2025 (section 159GZZZQ).

10. The consideration you are taken to have received is not adjusted by subsections 159GZZZQ(2) to (9).

Capital gains tax consequences

11. CGT event A1 happened to you on 25 March 2025 when you disposed of each of your PAC shares to PAC in the Buy-Back (section 104-10).

12. The Buy-Back price of \$12.00 per PAC share represents the capital proceeds for capital gains tax purposes you received for each PAC share (subsection 116-20(1)).

13. If you did not hold your PAC shares through a partnership, you made a capital gain from CGT event A1 happening if the Buy-Back price is more than the share's cost base. Alternatively, you made a capital loss if the Buy-Back price was less than the share's reduced cost base (subsection 104-10(4)).

14. Where you made a capital gain, you can treat the capital gain as a 'discounted capital gain' if you acquired your PAC shares on or before 23 March 2024 and the other conditions of Subdivision 115-A are met.

15. If you held the PAC shares through a partnership, any capital gain or capital loss will be made by the partners individually (subsection 106-5(1)). Each partner in a partnership has a separate cost base and reduced cost base for the partner's interest in each PAC share sold in the Buy-Back by the partnership (subsection 106-5(2)).

Shares held as trading stock

16. If you held your PAC shares as 'trading stock' (as defined in subsection 995-1(1)) and sold them in the Buy-Back in the ordinary course of your business, you:

- include the Buy-Back price per PAC share you sold in the Buy-Back in your assessable income (subsection 70-80(1)), and

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- disregard any capital gain or capital loss you made (section 118-25).

Shares held on revenue account

17. If you held your PAC shares as revenue assets (as defined in section 977-50), but not as trading stock, the amount by which the Buy-Back price exceeds the cost of each PAC share you sold in the Buy-Back is included in your assessable income (section 6-5). Any capital gain you made on the shares is reduced by the amount that is otherwise included in your assessable income (section 118-20).

18. Alternatively, the amount by which the cost of each PAC share you sold in the Buy-Back that exceeds the Buy-Back price is an allowable deduction (section 8-1). The reduced cost base of each PAC share is reduced by the amount of that deduction (subsection 110-55(9)).

Foreign resident shareholders

19. If you are a foreign resident (as defined in subsection 995-1(1)) who participated in the Buy-Back, you disregard any capital gain or capital loss if the PAC shares you sold under the Buy-Back were not 'taxable Australian property' within the meaning given by section 855-15 (section 855-10).

Sections 45A, 45B and 45C do not apply

20. The Commissioner will not make a determination under subsection 45A(2) or 45B(3) that section 45C applies to the whole, or any part of the Buy-Back price you received.

Scheme

21. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

Pacific Current Group Limited

22. PAC is a public company listed on the Australian Securities Exchange (ASX).

23. PAC is a global multi-boutique asset management firm offering capital solutions and global distribution and marketing services. The PAC group currently operates out of its offices in Melbourne, Australia and Tacoma, United States of America (US).

24. As at 30 June 2024, PAC had:

- issued share capital of \$196,757,000, retained earnings of \$320,501,000 and total equity of \$599,059,000
- 52,197,379 ordinary shares on issue, with the majority of PAC's shareholders having an Australian registered address and approximately 3% of PAC shareholders located overseas.

25. On 14 March 2025, PAC paid an unfranked dividend of \$0.15 per share.

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26. PAC had recently completed the sale of some of its investments which generated aggregate cash proceeds of approximately \$370 million.

Off-market share buy-back

27. On 17 April 2024, PAC announced its intention to seek shareholder approval to return surplus capital generated as a result of the sale of investments to shareholders by way of an equal access off-market buy-back.

28. PAC proposed to buy-back up to \$300 million of PAC shares or up to a maximum of 25 million PAC shares representing 47.9% of PAC's issued share capital through a fixed price offer process.

29. Participation in the Buy-Back was open to all eligible Australian and New Zealand resident shareholders who were registered on the PAC share register on 5 February 2025.

30. Participation in the Buy-Back was not open to shareholders who reside in a jurisdiction other than Australia or New Zealand, including any person who is (or who is acting on behalf of or for the account of a person who is) located in the US or who is a US Person or a resident of Canada.

31. Participation in the Buy-Back was voluntary. PAC retained the discretion to vary the size of the Buy-Back or not to buy-back any shares.

32. If the total number of shares tendered was more than the maximum Buy-Back amount of 25 million shares, PAC would have scaled back each application on a pro rata basis to achieve the total number of shares that equals the maximum of 25 million shares.

33. A resolution in favour of the Buy-Back was agreed to by shareholders at an extraordinary general meeting held on 30 January 2025.

34. The Buy-Back offer opened on 10 February 2025 and closed on 21 March 2025.

35. PAC purchased 22,043,520 PAC shares under the Buy-Back on 25 March 2025 representing approximately 42.23% of total shares on issue. A scale-back was not applied.

36. Participating shareholders received \$12.00 per share they sold in the Buy-Back on 25 March 2025.

37. All PAC shares bought back under the Buy-Back were cancelled.

Other matters

38. PAC's share capital account (as defined in section 975-300) was not tainted within the meaning of Division 197.

Commissioner of Taxation
16 April 2025

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Appendix 1 – Explanation

❶ *This Explanation is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

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Off-market purchase

39. For the purposes of Division 16K, where a company buys a share in itself from a shareholder, the purchase is either an 'on-market purchase' (paragraph 159GZZZK(c)) or an 'off-market purchase' (paragraph 159GZZZK(d)).

40. Although PAC's ordinary shares are listed for quotation in the official list of the ASX, the Buy-Back was not made in the ordinary course of trading on the ASX. Therefore, the Buy-Back is an off-market purchase within the meaning of paragraph 159GZZZK(d).

No part of the Buy-Back price is a dividend

41. Section 159GZZZPA provides where a buy-back of a share by a listed public company is an off-market purchase, no part of the purchase price in respect of the buy-back of the share is taken to be a dividend.

42. The term 'listed public company' is defined in subsection 995-1(1) as (relevantly) 'a company shares in which ... are listed for quotation in the official list of an approved stock exchange'. However, a company is not a listed public company if, broadly, 75% or more of the dividend or capital rights or voting power of the company are held by 20 or fewer persons (that is, the company is closely held).

43. PAC is listed on the ASX and it is not closely held. Accordingly, PAC is a listed public company for the purposes of section 159GZZZPA.

44. As PAC is a listed public company and the Buy-Back is an off-market purchase, no part of the Buy-Back price is a dividend pursuant to section 159GZZZPA.

Calculation of sale consideration

45. For the purposes of determining the amount of gain or loss you made on the disposal of your PAC shares in the Buy-Back, the consideration you are taken to have received in respect of the disposal of a share is worked out in accordance with section 159GZZZQ.

46. Section 159GZZZQ can operate to adjust the amount of consideration you received for your PAC shares for either capital gains tax purposes or revenue account purposes.

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47. Subsection 159GZZZQ(1) provides that you are taken to have received an amount equal to the purchase price (in this case the Buy-Back price of \$12.00 you received for each PAC share sold) as consideration in respect of the sale of the share bought back. However, this amount can be subject to certain adjustments.

48. Subsection 159GZZZQ(2) is one of the adjusting provisions. It provides that if the Buy-Back price is less than the amount that would have been the market value of the PAC share (calculated as if the Buy-Back did not occur and was never proposed to occur), the consideration is increased to the market value.

49. We accept, pursuant to the formula set out in paragraph 1 of Taxation Determination TD 2004/22 *Income tax: for Off-Market Share Buy-Backs of listed shares, whether the buy-back price is set by tender process or not, what is the market value of the share for the purposes of subsection 159GZZZQ(2) of the Income Tax Assessment Act 1936?*, that the market value of a PAC share at the time of the Buy-Back if the Buy-Back did not occur and was never proposed to occur was less than the Buy-Back price. As the Buy-Back price was not at a discount to market value, subsection 159GZZZQ(2) does not apply to adjust the consideration of \$12.00 per share you received.

Foreign resident shareholders

50. If you are a foreign resident, you only have capital gains tax consequences if the PAC shares you sold under the Buy-Back are taxable Australian property (section 855-10). The term taxable Australian property is set out in the table in section 855-15. Your PAC share is not an 'indirect Australian real property interest' (table item 2 of section 855-15). Therefore, your PAC share will constitute taxable Australian property if:

- you used your share in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- your share is a CGT asset that is covered by subsection 104-165(3), which is about you as an individual taxpayer choosing to disregard a capital gain or capital loss on ceasing to be an Australian resident (table item 5 of section 855-15).

Sections 45A, 45B and 45C do not apply

51. Section 45A applies where capital benefits are streamed to certain shareholders (the advantaged shareholders) who derive a greater benefit from the capital benefits than other shareholders and it is reasonable to assume that the other shareholders (the disadvantaged shareholders) have received or will receive dividends.

52. Although a capital benefit (as defined in paragraph 45A(3)(b)) was provided to you under the Buy-Back, the circumstances of the Buy-Back indicate that there was no streaming of capital benefits to some shareholders and dividends to other shareholders.

53. Section 45B applies where certain capital payments are paid to shareholders in substitution for dividends.

54. While the conditions of paragraphs 45B(2)(a) and (b) were met in respect of the Buy-Back, the requisite purpose under paragraph 45B(2)(c) of enabling a person to obtain a tax benefit, by way of a capital distribution, was not present.

55. Having regard to the relevant circumstances (as set out in subsection 45B(8)) of the Buy-Back, it cannot be concluded that a person entered into, or carried out, the Buy-

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Back for a more than incidental purpose of enabling a participating shareholder to obtain a tax benefit from the provision of capital benefits.

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56. This paragraph sets out the details of the provisions of the *Income Tax Assessment Acts* ruled upon or referenced in this Ruling.

Table 1: Provisions of the *Income Tax Assessment Act 1936* and *Income Tax Assessment Act 1997* ruled upon or referenced in this Ruling

<i>Income Tax Assessment Act 1936</i>	section 45A
<i>Income Tax Assessment Act 1936</i>	subsection 45A(2)
<i>Income Tax Assessment Act 1936</i>	paragraph 45A(3)(b)
<i>Income Tax Assessment Act 1936</i>	section 45B
<i>Income Tax Assessment Act 1936</i>	paragraph 45B(2)(a)
<i>Income Tax Assessment Act 1936</i>	paragraph 45B(2)(b)
<i>Income Tax Assessment Act 1936</i>	paragraph 45B(2)(c)
<i>Income Tax Assessment Act 1936</i>	subsection 45B(3)
<i>Income Tax Assessment Act 1936</i>	subsection 45B(8)
<i>Income Tax Assessment Act 1936</i>	section 45C
<i>Income Tax Assessment Act 1936</i>	Division 16K
<i>Income Tax Assessment Act 1936</i>	section 159GZZZK
<i>Income Tax Assessment Act 1936</i>	paragraph 159GZZZK(c)
<i>Income Tax Assessment Act 1936</i>	paragraph 159GZZZK(d)
<i>Income Tax Assessment Act 1936</i>	section 159GZZZPA
<i>Income Tax Assessment Act 1936</i>	section 159GZZZQ
<i>Income Tax Assessment Act 1936</i>	subsection 159GZZZQ(1)
<i>Income Tax Assessment Act 1936</i>	subsection 159GZZZQ(2)
<i>Income Tax Assessment Act 1936</i>	subsection 159GZZZQ(3)
<i>Income Tax Assessment Act 1936</i>	subsection 159GZZZQ(3A)
<i>Income Tax Assessment Act 1936</i>	subsection 159GZZZQ(4)
<i>Income Tax Assessment Act 1936</i>	subsection 159GZZZQ(5)
<i>Income Tax Assessment Act 1936</i>	subsection 159GZZZQ(6)
<i>Income Tax Assessment Act 1936</i>	subsection 159GZZZQ(7)
<i>Income Tax Assessment Act 1936</i>	subsection 159GZZZQ(8)
<i>Income Tax Assessment Act 1936</i>	subsection 159GZZZQ(9)
<i>Income Tax Assessment Act 1997</i>	section 6-5
<i>Income Tax Assessment Act 1997</i>	section 8-1
<i>Income Tax Assessment Act 1997</i>	subsection 70-80(1)
<i>Income Tax Assessment Act 1997</i>	section 104-10
<i>Income Tax Assessment Act 1997</i>	subsection 104-10(4)
<i>Income Tax Assessment Act 1997</i>	subsection 104-165(3)
<i>Income Tax Assessment Act 1997</i>	subsection 106-5(1)
<i>Income Tax Assessment Act 1997</i>	subsection 106-5(2)
<i>Income Tax Assessment Act 1997</i>	subsection 110-55(9)
<i>Income Tax Assessment Act 1997</i>	Subdivision 115-A
<i>Income Tax Assessment Act 1997</i>	subsection 116-20(1)
<i>Income Tax Assessment Act 1997</i>	section 118-20
<i>Income Tax Assessment Act 1997</i>	section 118-25
<i>Income Tax Assessment Act 1997</i>	Division 197

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<i>Income Tax Assessment Act 1997</i>	Division 230
<i>Income Tax Assessment Act 1997</i>	section 855-10
<i>Income Tax Assessment Act 1997</i>	section 855-15
<i>Income Tax Assessment Act 1997</i>	section 975-300
<i>Income Tax Assessment Act 1997</i>	section 977-50
<i>Income Tax Assessment Act 1997</i>	subsection 995-1(1)

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References

Related Rulings/Determinations:

TD 2004/22

ATO references

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